DRN-4946496

The complaint

Mr R complains that Hargreaves Lansdown Advisory Services Limited ('HLAS'):

- Were negligent in allowing the inclusion of the Woodford Equity Income Fund (WEIF) within his investment portfolios. He states that its inclusion within his portfolio resulted in "massive and exceptional underperformance" for which he would now like HLAS to recompense him for.

- Have refused to provide a breakdown to him of the impact of the WEIF's exposure within his portfolio and those within his family trust so he can establish the true impact of his losses.

- Are unwilling to revisit a loss calculation that they've undertaken on his late wife's investment portfolio.

What happened

In April 2007, Mr R and his late wife met with HLAS's adviser to discuss ways in which they could achieve better returns on their investments. In July 2007, HLAS wrote to Mr R confirming the outcome of their meeting. The adviser established that:

- The value of their non-pension assets was approximately £1,345,000.

- Mr R didn't have an immediate need for income as he was already in receipt of a final salary pension (of c£63,000) at that point, which covered his outgoings. However, the adviser determined that it was conceivable that an income from the investments could be needed in the future.

- Over the years, Mr R, who was an experienced investor, had invested his portfolio into largely equity-based investments. However, he was now looking to 'diversify his portfolio to embrace managed equities and fixed interest'.

- Mr R didn't wish to make his own investment decisions and would rather defer that responsibility to a professional fund manager.

- Mr R was willing to accept some risk to his capital in order to achieve the potential for better returns.

- Mr R's primary objective was capital growth over the medium to long term. An asset mix was agreed upon that would be invested approximately: 70.1% in UK & overseas equities, 27.8% in fixed interest and 2.1% in cash.

- HLAS recommended Mr R transfer his PEP and ISA portfolios (c£83,000) into HL's portfolio management service (PMS) and at the same time, they would gradually transition his portfolio held with a competitor over to themselves on a piecemeal basis to avoid paying capital gains tax where possible. The adviser explained the recommendation lowered the amount of risk he was currently taking with his savings because it reduced the equity content of the funds he was currently invested in.

Over the years, HLAS met with Mr R to understand if his circumstances had altered and review his investments to ensure they were invested in line with the level of risk he was prepared to take.

Mr R's ISA monies (which represented the largest slice of his funds) were invested in HL's 'Portfolio for Capital Growth 2' and the monies in his main account (which made up the balance of his monies) were invested in HL's 'Portfolio for Income and Growth 6'. Within each of those portfolios, Mr R's monies were then split across a number of HL's Multi Manager Funds (MMF). And, from 2014, some of those MMFs had exposure to the WEIF.

HL's factsheet for the 'Portfolio for Capital Growth 2' states that its aim is to produce the highest total return for a given level of risk. The portfolio's key objective is to achieve capital growth over the medium to longer-term. In addition, the factsheet states that "the portfolio invests in fixed interest, total return and equity funds. Cash may be held strategically and there will be at least a small weighting to cover ongoing expenses".

The PMS 2 invested in the following HL MMFs: HL MM Asia & Emerging Markets, HL MM Balanced Managed, HL MM High Income & Growth, HL MM Special Situations, HL MM Strategic Assets and HL MM Strategic Bond. Its equity and WEIF exposure were broadly as follows:

- October 2014 – 60.9% of the portfolio was invested in equities. Of this, 6.1% was in invested in the WEIF.

- October 2015 – 63.1% of the portfolio was invested in equities. Of this, 6.4% was in invested in the WEIF.

- October 2016 – 65.5% of the portfolio was invested in equities. Of this, 6% was in invested in the WEIF.

- October 2017 – 65.8% of the portfolio was invested in equities. Of this, 5.1% was in invested in the WEIF.

- October 2018 – 61.7% of the portfolio was invested in equities. Of this, 4.1% was in invested in the WEIF.

- July 2019 – 62.4% of the portfolio was invested in equities. Of this, 3.4% was in invested in the WEIF.

HL's factsheet for the 'Portfolio for Income and Growth 6' explains that its aim is to produce the highest total return for a given level of risk. The portfolio's key objective is to achieve growth in both income and capital over the medium to longer-term. The factsheet also confirms that the portfolio invests in a range of fixed interest (bond) funds and equity funds.

The PMS 6 invested in the following HL MMFs: HL MM High Income, HL MM Income & Growth, HL MM Strategic Assets and HL MM Strategic Bond. Its equity and WEIF exposure were broadly as follows:

- October 2014 – 80.2% of the portfolio was invested in equities. Of this, 13.1% was in invested in the WEIF.

- October 2015 – 82.1% of the portfolio was invested in equities. Of this, 14.3% was in invested in the WEIF.

- October 2016 – 79.9% of the portfolio was invested in equities. Of this, 14% was in invested in the WEIF.

- October 2017 – 79.4% of the portfolio was invested in equities. Of this, 11.3% was in invested in the WEIF.

- October 2018 – 75.5% of the portfolio was invested in equities. Of this, 10.6% was in invested in the WEIF.

- July 2019 – 76.2% of the portfolio was invested in equities. Of this, 8.9% was in invested in the WEIF.

Following the passing of Mr R's wife, her investments were transferred to his portfolios in around March 2017, and in July 2017, HLAS met with Mr R to undertake a review. The aim of the meeting was to carry out an assessment of Mr R's finances to determine whether any alterations were needed. By this point, Mr R's assets had appreciated to £1,850,000 and he still had no need for income and his priority remained focused on capital growth. When Mrs R's monies were moved to Mr R's existing portfolios – he retained the same risk profile on his portfolios as his attitude towards investment risk hadn't altered.

In January 2019, Mr R had an annual review discussion with his HLAS adviser. At that meeting, as at all of the other review meetings Mr R had, HLAS revisited the level of risk he was prepared to take with his investments. Mr R confirmed the level of risk he was prepared to take with his monies hadn't altered and he was happy to continue with his existing PMS asset allocations and the associated risk within the portfolios (which was cash 0 to 5%, fixed interest 20 to 25% and managed equities 70 to 75%). He wished to continue leaving all of the investment decisions to HLAS.

At that meeting, the adviser noted that based on Mr R's circumstances at that time, he had the capacity to take risks at the level he was doing and no changes were considered necessary to his investments. The adviser concluded that the two portfolios aimed to balance his income and growth objectives. Even though income wasn't a pre-requisite, the adviser concluded that it was both desirable and sufficient for Mr R's needs.

<u>The WEIF and its background</u>

The WEIF was managed by Neil Woodford, who left Invesco Perpetual in 2013 to set up Woodford Investment Management ("WIM"). The WEIF was launched in May 2014, with a £1 per unit fixed offer price until 18 June 2014. The fund invested predominantly in UK companies and aimed to provide a reasonable level of income together with capital growth.

The Authorised Corporate Director (ACD) of the WEIF was Capita Financial Managers, later known as Link Fund Solutions. The WEIF broadly tracked the benchmarks (albeit whilst providing a greater return and experiencing some more volatility) until the second half of 2017, when there was a significant fall which was not experienced by the benchmarks. It began to significantly underperform benchmarks from early 2018 and the performance followed a very different pattern to the benchmarks from early 2019 to the date of suspension.

Alongside this, the fund began to see significant outflows from mid-2017, falling from around £10bn of assets under management to around £3bn in two years. And, in June 2019 the extent of those outflows - and the portion of the WEIF's assets which were not liquid - led

Link to decide to suspend trading in the fund. Link removed WIM as the investment manager around this time. The fund did not trade again.

Later in 2019, Link decided to liquidate the fund. Investors have since received payments as and when the fund's assets have been sold. A small amount remains invested in assets which are not liquid i.e. cannot currently be sold. A scheme of arrangement between investors and Link has now been sanctioned by the court and will conclude the wind up of the fund with further distributions being made to investors who held units in the fund at suspension.

Mr R's complaint

In February 2020, Mr R decided to formally complain to HLAS. In summary, he said that exposure to the WEIF in the HL Multi Manager Funds, which he held as a Portfolio Management Service client, had resulted in "massive and exceptional underperformance". Mr R went on to say that he would like to know the impact of the WEIF on his investments, including the family Trusts that he holds. In addition, Mr R questioned the equity exposure within his late wife's portfolio, given her attitude towards investment risk.

After reviewing Mr R's complaint about the WEIF issue, HLAS concluded they were satisfied they'd done nothing wrong. They also said, in summary, that they were content their advice to him was appropriate and suitable on each occasion. HLAS went on to say that the portfolio their adviser had recommended was designed to build his wealth for the future. In addition, HLAS said that the inclusion of the WEIF within the MMF was aligned to his desired asset allocation and his attitude to risk.

HLAS also said, in summary, that the MMFs his monies were invested in, invest in a wide range of underlying investments, meaning that the negative impact of one of their investments underperforming or (as in the case of WEIF) being suspended, should be limited. HLAS said that they were satisfied that the Multi Manager Funds Mr R invested in have been managed in accordance with the mandate of the fund, including each fund being sufficiently diversified. HLAS explained that they did not agree that they (as the manager of the Multi Manager Funds) had failed to comply with its policies with respect to diversification.

HLAS also said that they were not in a position to calculate the impact of the WEIF on individual clients' portfolios. That's because, HLAS said, "performance attribution is determined by a great number of factors; the number of units traded and the times of those trades made by the portfolio managers in the underlying Multi Manager Funds, and their weights within PMS, and the timings of the client's personal trades – selling down and topping up".

However, in respect of Mr R's concerns about the equity exposure within his late wife's portfolio, HLAS said that after reviewing the advice she'd received from them, they conceded that a mistake had been made. HLAS went on to say that the equity content of her portfolio was not in line with her attitude towards investment risk, and it would have been more suitable for Mrs R to have been invested in their Portfolio 5, for income & growth.

HLAS explained that having reviewed the performance of the two portfolios, they had determined that Mrs R didn't suffer a financial loss as a result of being invested into the portfolio she held. HLAS said that their calculations had shown that over the period in which Mrs R was invested, Portfolio 6 outperformed Portfolio 5. Despite this, HLAS acknowledged that their service in this instance was not in line with their usual standards and credited £250 compensation to the late Mrs R's estate, which was paid to Mr R's loyalty bonus account as her beneficiary.

Mr R was unhappy with HLAS's response, so he referred his complaint to this service. In summary, he repeated the same concerns that he set out to HLAS. Mr R also said that there was a "disconnect between the investment risk profile that had been advised to HL's financial advisory staff and the positioning of the WEIF in the funds invested in, particularly the Income and Growth Trust". In addition, Mr R stated that he was concerned that HLAS weren't in a position to "calculate the impact of (the demise of) WEIF on individual clients' portfolios" and he said that meant he wasn't in a position to determine whether HLAS had carried out their duties accordingly.

Whilst Mr R said his late wife's portfolio had been transferred to him in 2017 and given that he had agreed to keep the investments, he felt that HLAS should update their loss calculation to the date of his February 2020 complaint letter. Mr R said that he didn't think the £250 HLAS had offered was fair in light of the amount of time the error had existed for, especially in light of the management fees he'd being paying during that period.

Mr R's complaint was then considered by one of our Investigators. He concluded that HLAS hadn't treated Mr R unfairly because the WEIF made up a relatively small amount of his portfolio. And, the amount invested in WEIF wasn't enough to take the overall portfolio above his stated risk tolerance.

Mr R, however, disagreed with our Investigator's findings. In summary, he said that HLAS "ignored the basis of their tried and tested techniques, as outlined above in their brochures". He also said that "HLAS has not exercised the appropriate duty of care with sufficient due diligence to deliver PMS in the manner underlying their contract with myself". In addition, Mr R stated that:

- It is wrong and simplistic to categorise the WEIF issue as a market risk issue.
- HLAS's processes etc failed catastrophically in the case of WEIF. It is his contention that this failure was not due to wrong decision making about market opportunities or fund manager potential but the lack of the appropriate duty of care utilising the necessary due diligence by Hargreaves Lansdown Asset Management (HLAM) as part of their contractual commitment.
- Appropriate governance checks and balances do not seem to have been sufficiently taken into account. Similarly, a significant foray by the fund manager into areas of the market in which he had no previous track record or expertise does not appear to have warranted sufficient attention.

In respect of the issue surrounding his late wife's investment portfolio, Mr R said that he believed that the basis put forward for only taking the remedial action until his wife's passing is "totally incorrect". Mr R also said in summary:

- None of the HL staff went back to check on the suitability of the model portfolios that were being used to manage both his and his wife's investments.
- It is factually incorrect to state that this was part of an annual suitability review of all his assets. The annual review did not take place until late July 2017, which was some three months after the transfer of the assets.

Our Investigator was not persuaded to change his view as he didn't believe that Mr R had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr R then asked the Investigator to pass the case to an Ombudsman for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have summarised this complaint in less detail than Mr R has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is a fair and reasonable outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr R and HLAS in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr R's complaint and it's largely for the same reasons that our Investigator has set out - I'll explain why below.

Before I do, I think it would be helpful to make clear that Mr R's complaint has been brought against Hargreaves Lansdown Advisory Services Limited. That part of the Hargreaves Lansdown business is responsible for providing personalised financial advice to their customers to help them make informed decisions about their investments and wealth planning needs. That means it was HLAS's job to make sure the selected portfolio was consistent with Mr R's aims and objectives and importantly, his attitude to investment risk. Although my decision is focused on this specific entity, there are two other Hargreaves Lansdown businesses that are closely linked to HLAS that Mr R indirectly came into contact with, but they're separate firms; Hargreaves Lansdown Asset Management Limited (HLAM) and Hargreaves Lansdown Fund Managers Limited (HLFM). HLAM ensure customers' assets are managed and held securely and then the latter, HLFM, undertakes research and analysis and makes the decisions on which underlying investments to hold within HL's portfolios. HLFM focuses on the active management of the investment portfolios that HLAS offer to their customers.

I think it's important to be clear that Mr R is not a direct holder of the WEIF. Mr R is invested (via his PMS account) in a number of HL Multi-Manager Funds, some of which have exposure to the WEIF. Mr R therefore does not hold the WEIF in his portfolios, has not had dealings in his investments suspended, and he is not entitled to receive any capital redemption payments from Link. But in any event, Mr R's concerns are anchored around the fact that the nature of investments that WEIF was purchasing meant that it was wholly unsuitable for someone with his risk appetite and that including the WEIF within the wider portfolio was negligent. Having thought carefully about Mr R's comments, I don't agree, and I'll explain why.

In shaping my decision, I do feel it is relevant to understand the broad reasons why HLAS recommended the PMS and whether it was suitable for his needs, largely because Mr R states that the inclusion of the WEIF in the managed funds meant that it didn't match his risk profile.

I think it's clear from HLAS's early interactions with Mr R that he's an experienced investor - he's held stock market-based investments for a number of years and during that time, he stated that he'd experienced seeing the value of his monies fall as well as rise. Having looked at Mr R's interactions with HLAS in the five years running up to the Woodford fund being suspended (so from 2014 to 2019), he held the same investment objective, that of capital growth above the rate of inflation. HLAS's interactions with Mr R confirmed that he's not risk averse and was prepared to take some risk in order to help meet that objective.

The key consideration when looking at Mr R's portfolios is whether or not they were suitable for him and whether the assets that it held were consistent with what he was told they would be invested in, including the spread of assets, the individual split between funds and any other relevant information involving risk. I don't believe that it would be fair and reasonable to look at the WEIF in isolation.

There's no doubt that the performance of the WEIF wasn't as the fund managers had hoped and its eventual suspension and liquidation is unfortunate. However, the reality is that the nature of the WEIF changed over time but there's insufficient evidence to show HL had changed its view that it offered potential to show good performance over the longer term and, while it became higher risk, there isn't the evidence to show this meant it became unsuitable at the level held in the portfolio. I don't think it's fair or reasonable to hold HLAS responsible for not foreseeing the suspension and subsequent liquidation of the WEIF. As I've already explained Mr R's PMS portfolios are managed by the Hargreaves Lansdown Asset Management (HLAM) discretionary management team and not the HL Advisory Services advisor, and the decision to have exposure to the WEIF was a fund management decision taken by HLFM the manager of the HL Multi-Manager Funds in which Mr R's portfolios are invested.

So, while I've considered Mr R's more detailed comments about the WEIF's inclusion in the individual funds, HLAS wasn't responsible for those investment decisions. HLAS was responsible for giving Mr R suitable advice, and reviewing the PMS yearly as it did, ensuring it remained suitable for him – and as I've said, I consider it was despite the exposure to the WEIF. And that's because it matched his objective of investing over the medium to long term, for the potential of better returns than he might expect from deposit-based investments and importantly, it was aligned to the level of risk he was prepared to take with his monies.

The WEIF aimed to provide capital growth, it also aimed to produce an income. HL's PMS portfolio 6 aimed to achieve growth in both income and capital growth over the medium to long term and PMS portfolio 2 aimed to provide capital growth too. Mr R agreed with his adviser that he didn't wish to take undue risks with his monies and having no more than 75% invested in equities suited his attitude towards risk – but this referred to his whole portfolio. I'm not persuaded that the inclusion of the WEIF made the portfolios unsuitable for Mr R because typically, a managed portfolio may at times include investments that are slightly higher than a consumer's stated risk profile and others that are below. Despite the fact that the WEIF changed significantly post launch and latterly had a high exposure to small and unlisted stocks, I'm nonetheless satisfied that it remained suitable when considered in the context of the *overall* portfolio. So, to be clear, I am not finding that the WEIF, individually, was suited to Mr R's attitude to risk. The key consideration for Mr R's adviser was whether the PMS portfolio 2 and 6 was overall suitable and in line with Mr R's objectives and attitude to risk.

When looking at investment losses arising from holdings in a portfolio, it isn't usually fair to focus on the one holding that's suffered a loss, ignoring the remainder of the portfolio, like Mr R's which contained ten funds across the two portfolios, which themselves held a multitude of different assets. Instead, it's important that I take into account both the asset itself, as I've done above, and the extent to which his portfolio was invested in it.

Despite Mr R's willingness to invest up to 75% of his funds in equities, between October 2014 and July 2019, HL held around 63% of Mr R's portfolio in equities in his ISA portfolio, and of that, his exposure to the WEIF gradually reduced from nearly 6.1% to 3.4%. It seems that as the performance of the WEIF stalled, the fund manager didn't add to the holding, and the falling value of the units meant that the percentage of the overall fund value it represented fell. Importantly, the WEIF wasn't included in all of funds Mr R's monies were invested in – this was predominately the Income and Growth trust, Strategic Assets, Balanced Managed and Special Situations.

I do appreciate Mr R's concerns about the WEIF's performance and the place that it had within his portfolio. However, it didn't always perform poorly, particularly at launch and the early years that followed. Mr R says that he believes HLAS have been unreasonable by refusing to provide a breakdown to him of the impact of the WEIF's exposure within his portfolio, but I don't agree. And that's because, I think sufficient information is available as the percentage exposure in the funds is published, as is the performance data for the WEIF. And, as I've already explained, when looking at investment losses arising from holdings in a portfolio, it isn't usually fair to focus on the one holding that's suffered a loss, ignoring the remainder of the portfolio. Mr R's two portfolios contained a spectrum of different HL MMFs, which themselves held a broad range of different assets. As an experienced investor, Mr R knows full well that there's no certainty when investing - and the whole point of investing in a balanced portfolio is to help limit the impact of any one single investment adversely impacting his wider savings.

Mr R received regular updates about his portfolio's performance and HL's website and newsletters provide wider general insight about their investments and markets so I'm satisfied that Mr R's information needs have been met. But, the fact that the WEIF did not perform as hoped, is a not a basis on which I think it's fair or reasonable to ask HLAS to provide any level of detail beyond what's already publicly available about the breakdown of the WEIF within the portfolios.

Mr R delegated responsibility to HLAS for selecting a suitable portfolio for him, and in turn HLFM were responsible for managing those monies. That gave HLFM license to invest Mr R's monies as they saw fit within the confines of the risk mandate that he'd agreed to. In short, that meant HL's fund managers were free to select investments for the portfolio which in their professional opinion, would meet the objectives of the fund. HLAS weren't required to seek prior approval from Mr R about any proposed investment purchases (or sale decisions) and they weren't required to keep him abreast of the individual performance of various assets within the fund. HLAS were however required to keep Mr R informed about how the portfolio overall was performing and they did that by providing him with regular statements and undertaking regular annual reviews.

Using financial services won't always be hassle free, sometimes mistakes occur but when they do, we usually ask the business to put the consumer back into the position that they would've been in were it not for the error. The estate of Mr R's late wife asked HLAS to look at the equity exposure within her portfolio, given her attitude towards investment risk. HLAS said that after reviewing the advice she'd received from them, they conceded that a mistake had been made. HLAS went on to say that the equity content of her portfolio was not in line with her attitude towards investment risk, and it would have been more suitable for Mrs R to have been invested in their Portfolio 5, for income & growth rather than the Portfolio 6 that was originally recommended.

To understand whether Mrs R had been disadvantaged by the mistake, HLAS looked at the performance of the two portfolios and they looked at the time period covering the point at which the investment was made through to the time it was moved across to Mr R. HLAS determined that Mrs R didn't suffer a financial loss as a result of being invested into the

Portfolio she held because their calculations had shown that over the period in which Mrs R was invested, Portfolio 6 had outperformed Portfolio 5.

Mr R says he felt that he'd been disadvantaged by HLAS's actions because they'd not given consideration to the period of time over which the investments were then held by him, so from 2017 onwards. Mr R went on to say that he felt HLAS should have run their comparison calculation to the point at which he raised his complaint with them in 2020. So, I've not considered whether HLAS were right to conclude that no compensation was payable to Mrs R's estate, rather I've thought about whether HLAS should have paid Mr R any compensation as a result of their finding that they had overexposed his late wife's portfolio to equities, and I don't think they should. Mrs R's investment was transferred to Mr R in 2017 and then moved into his portfolio and invested in line with his agreed attitude towards investment risk from that point forward. So, from 2017 a line was drawn in the sand relating to this and the monies that Mr R received from his late wife were invested correctly.

HLAS did acknowledge that their service in this instance was not in line with their usual standards and credited £250 to the late Mrs R's estate, which was paid to Mr R's loyalty bonus account as her beneficiary. However, this complaint is about the advice that Mr R received from HLAS so I can only consider his investments and the period from when the additional investments which belonged to the late Mrs R's, then became Mr R's. So if Mr R is unhappy about the matter of any management fee's that his late wife paid, that is a matter for her estate to address with HLAS in the first instance.

As I've not been persuaded that Mr R has been treated unfairly, I'm not upholding his complaint.

My final decision

I'm not upholding Mr R's complaint and as such, I'm not going to instruct Hargreaves Lansdown Advisory Services Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 February 2025.

Simon Fox
Ombudsman